

² The Board notes that, following the October 22, 2019 decision and on appeal, appellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On March 24, 2015 appellant, then a 67-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that, following an accepted December 2, 2014 traumatic injury,³ he further injured his right knee due to factors of his federal employment, including prolonged walking and carrying combined laps weighing up to 30 pounds in his satchel. He alleged that he developed right knee and hip pain, and left leg pain, as well as difficulty walking at a normal pace and without a limp. Appellant noted that he first became aware of his condition on December 2, 2014 and realized its relation to his federal employment on March 16, 2015. On March 25, 2015 he underwent a right total knee replacement surgery. Appellant stopped work on that date. On June 19, 2015 OWCP accepted his claim for aggravation of preexisting localized primary osteoarthritis of the right leg.

On August 19, 2015 appellant returned to light-duty work for one hour per day. In December 2015, he began working four hours per day.

On December 21, 2016 the employing establishment offered appellant a modified city carrier position working eight hours per day. Appellant accepted this position on that date and noted he would review the position with his doctor.

In a January 4, 2017 note from Dr. Kyu-Jin Kim, a family practitioner, appellant asserted that the employing establishment was not accommodating his work restrictions as he had been standing or walking for more than four hours a day.

On January 16, 2017 Dr. Fulton S. Chen, a Board-certified physiatrist, examined appellant and diagnosed status post March 15, 2015 right total knee arthroplasty. He found that appellant could work eight hours per day with restrictions.

The employing establishment offered appellant a modified city carrier position on February 2, 2017.

On February 8, 2017 OWCP referred appellant, a statement of accepted facts, and a list of questions to Dr. Bruce Huffer, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Jan Eric Henstorf, a Board-certified orthopedic surgeon, completed a report on February 24, 2017 and found that appellant could work, but not in his date-of-injury position as a mail carrier. He provided restrictions.

In his March 8, 2017 report, Dr. Chen further limited appellant's lifting to 10 pounds. He also opined that he should perform desk work only with the ability to sit, stand, and walk as needed to keep comfortable.

³ OWCP previously accepted a December 2, 2014 traumatic injury claim for right knee strain and contusion under OWCP File No. xxxxxx647.

Dr. Huffer completed a report on March 3, 2017 and described appellant's history of injury and medical history. He noted that he continued to experience pain after his total knee replacement. Dr. Huffer opined that appellant could not return to his date-of-injury position, but could work eight hours a day with restrictions. He found that he could not walk for more than 30 minutes at a time, could not stand for more than 15 minutes at a time, could not squat or kneel and could only lift 10 pounds. Dr. Huffer completed a work capacity evaluation (OWCP-5c), which indicated that appellant could walk and stand for 30 minutes at a time, should avoid squatting and kneeling, and that he could push, pull, and lift up to 10 pounds.

On June 1, 2017 Dr. Chen recommended desk work only with the ability to sit, stand, and walk as needed to keep comfortable. He found appellant should not lift more than 10 pounds.

On August 31, 2017 the employing establishment offered appellant a modified city carrier position with full-time work and an annual salary of \$60,931.00. The duties entailed assisting customers while sitting in a chair for up to five hours and delivering express mail for up to two hours. The physical requirements included sitting for up to 8 hours; occasional simple grasping for up to 4 hours; walking and standing for 30 minutes at a time for up to 8 hours; and pushing, pulling, and lifting up to 10 pounds. Appellant refused this offer on August 31 and September 7, 2017.

In a letter dated September 7, 2017, appellant asserted that Dr. Chen had limited him to desk work only. He also alleged that delivering express mail required kneeling, bending, stooping, and twisting with his right knee, which violated Dr. Huffer's work restrictions.

On September 7, 2017 Dr. Chen indicated that appellant could lift no more than 10 pounds, should have the ability to sit, stand, and walk as needed for comfort, and could drive no more than 1 hour a day for 15 minutes at a time.

On September 29, 2017 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for the period September 16 through 29, 2017.

On October 10, 2017 the employing establishment notified OWCP that the August 31, 2017 job offer was permanent.

In an October 15, 2017 letter, OWCP informed appellant that the August 31, 2017 "temporary light-duty assignment" appropriately accommodated his work restrictions as determined by Dr. Huffer. It advised him of his obligation to work in accordance with 20 C.F.R. § 10.500(a) as he had medical work restrictions, light duty was available within those restrictions, and he was notified in writing that the light duty was available. OWCP further noted that any claimant who declines a temporary light-duty assignment deemed appropriate by OWCP was not entitled to compensation for total wage loss for the duration of the assignment. It directed appellant to accept the assignment and report to work. OWCP afforded him 30 days to provide a written explanation of his reasons for refusing the assignment and to submit evidence that the assignment was no longer available or no longer accommodated his medical work restrictions.

In a November 6, 2017 note, Dr. Chen continued to recommend desk work with the ability to sit, stand, and walk as needed.

Appellant, in a November 21, 2017 statement, asserted that both Drs. Fulton and Henstorf found that he could only perform desk work. He noted that the employing establishment offered him a limited-duty position in February 2017, which he accepted. Appellant asserted that the September 7, 2017 job offer did not include an eight-hour shift and did not describe the specific physical requirements. He also alleged that delivering express mail would require squatting and kneeling.

In a December 15, 2017 note, Dr. Henstorf again opined that appellant should be able to work in a sitting, standing, or walking position, but will need to change his position periodically throughout the day to control pain and that he should not be required to stand or walk for long periods. He disagreed that he should be able to drive for five hours as he could not change positions.

On July 10, 2018 Dr. Chen opined that if appellant were to return to work, he could perform sedentary work with no lifting more than 10 pounds; sitting, standing, and walking as needed to keep comfortable; and driving a maximum of 15 minutes at a time 1 hour a day.

By decision dated July 20, 2018, OWCP denied appellant's claim for compensation for the period September 16 through 29, 2017 as he had refused a temporary light-duty assignment that appropriately accommodated his work restrictions.

In notes dated January 10 and May 2, 2019, Dr. Chen continued to provide work restrictions consistent with those noted in his prior reports.

On June 27, 2019 appellant requested reconsideration of the July 20, 2018 decision.

By decision dated October 22, 2019, OWCP denied modification of its July 20, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.⁵ This meaning, for brevity, is expressed as disability from work.⁶

⁴ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁵ 20 C.F.R. § 10.5(f).

⁶ *S.W.*, *supra* note 4; *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.⁷ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.⁸

Section 10.500(a) of OWCP's regulations provides that benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.⁹

OWCP's procedures provide that, when a claimant is not on the periodic rolls, a claim for wage-loss compensation may be received on a Form CA-7 when a temporary light-duty assignment has been provided by the employing establishment. These procedures further provide that, when a formal loss of wage-earning capacity has not been issued, OWCP's claims examiner should follow certain specified procedures. If the evidence establishes that injury-related residuals continue and result in work restrictions, that light duty within those work restrictions was available, and that the employee was notified in writing that such light duty was available, then wage-loss benefits (effective the date of the written notification of light-duty availability) are not payable for the period covered by the available light-duty assignment. Such benefits are payable only for periods during which an employee's work-related medical condition prevent him or her from earning the wages earned before the work-related injury.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

On August 31, 2017 the employing establishment provided appellant an offer for a full-time modified city carrier position beginning that date with an annual salary of \$60,931.00. Appellant refused this offer on August 31 and September 7, 2017. On September 29, 2017 appellant filed a Form CA-7 claiming wage-loss compensation for the period September 16 through 29, 2017. On October 10, 2017 the employing establishment notified OWCP that the August 31, 2017 job offer was permanent. OWCP denied appellant's Form CA-7 claim, however, noting that on August 31, 2017 he was offered a "temporary light-duty assignment" by the

⁷ *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

⁸ *Id.*

⁹ 20 C.F.R. § 10.500(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9a (June 2013).

¹⁰ *Id.* at Chapter 2.814.9b (June 2013).

employing establishment. As the case record contains conflicting evidence with regard to whether the offered job was temporary or permanent employment, the Board is unable to determine from the current record whether its denial of appellant's claims is proper under 20 C.F.R. § 10.500 as it cannot be established whether she had been offered a temporary or permanent light-duty position.¹¹

The case will therefore be remanded for OWCP to have the employing establishment clarify whether the offered modified-duty position was temporary and in accordance with 20 C.F.R. § 10.500(a). After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 27, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹¹ *B.T.*, Docket No. 19-1331 (issued April 30, 2020); *C.W.*, Docket No. 18-1779 (issued May 6, 2019).